

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201703835	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/08/2017 7:30 PM	Location of Incident: Front of § 87(2)(b) 71st Precinct Stationhouse	Precinct: 71	18 Mo. SOL 11/8/2018	EO SOL 11/8/2018	
Date/Time CV Reported Mon, 05/08/2017 8:16 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/15/2017 11:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Paul Parkinson	10589	935466	071 PCT
2. POM Stephen Schmitt	12418	956245	071 PCT
3. POM Thomas Owens	08023	961051	071 PCT
4. SGT Keith Cheng	00644	929882	071 PCT
5. An officer			071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Ohalloran	12875	956137	071 PCT
2. POM Richard Weaver	16841	961439	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Stephen Schmitt	Abuse: On Westbury Court in Brooklyn, Police Officer Stephen Schmitt stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Paul Parkinson	Abuse: On Westbury Court in Brooklyn, Police Officer Paul Parkinson stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Paul Parkinson	Abuse: On Westbury Court in Brooklyn, Police Officer Paul Parkinson threatened to arrest § 87(2)(b)	
D.POM Paul Parkinson	Abuse: On Westbury Court in Brooklyn, Police Officer Paul Parkinson searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM Paul Parkinson	Discourtesy: On Westbury Court in Brooklyn, Police Officer Paul Parkinson spoke discourteously to § 87(2)(b)	
F. An officer	Abuse: On Westbury Court in Brooklyn, an officer frisked § 87(2)(b)	
G. An officer	Abuse: On Westbury Court in Brooklyn, an officer searched § 87(2)(b)	
H.POM Stephen Schmitt	Discourtesy: On Westbury Court in Brooklyn, Police Officer Stephen Schmitt acted discourteously toward § 87(2)(b)	
I.POM Paul Parkinson	Abuse: On Westbury Court in Brooklyn, Police Officer Paul Parkinson threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
J.SGT Keith Cheng	Abuse: At the 71st Precinct Stationhouse, Sergeant Keith Cheng did not process § 87(2)(b) complaint regarding an officer.	
K. An officer	Abuse: At the 71st Precinct Stationhouse, an officer threatened to arrest § 87(2)(b)	
L.POM Thomas Owens	Force: At the 71st Precinct Stationhouse, Police Officer Thomas Owens used physical force against § 87(2)(b)	
M.POM Thomas Owens	Force: At the 71st Precinct Stationhouse, Police Officer Thomas Owens hit § 87(2)(b) against a door.	
N. An officer	Force: At the 71st Precinct Stationhouse, an officer used physical force against § 87(2)(b)	
O. An officer	Force: At the 71st Precinct Stationhouse, an officer hit § 87(2)(b) against a door.	
P. An officer	Discourtesy: At the 71st Precinct Stationhouse, an officer acted discourteously toward § 87(2)(b)	

### Case Summary

On May 8, 2017, § 87(2)(b) filed the following complaint with the Internal Affairs Bureau (IAB), on behalf of himself and his friend, § 87(2)(b) (Board Review 01; 02; 03; 04). The complaint generated original log number 17-17163, and was received at the CCRB on May 15, 2017. § 87(2)(b) reported to IAB and the CCRB that PO Paul Parkinson of the 71<sup>st</sup> Precinct harasses him, frequently stopping him and issuing him summonses for no reason.

On May 8, 2017, at approximately 7:30 p.m., PO Parkinson and PO Stephen Schmitt of the 71<sup>st</sup> Precinct stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants near § 87(2)(b) in Brooklyn (**Allegations A and B**). PO Parkinson stated to § 87(2)(b) “You’re gonna get locked up [sic],” (**Allegation C**). PO Parkinson reached into § 87(2)(b) vehicle and removed § 87(2)(b) McDonald’s cup (**Allegation D**). § 87(2)(b) attempted to call his lawyer, at which point PO Parkinson allegedly told him, “I don’t give a fuck who you call,” (**Allegation E**). Two unidentified officers arrived, and an unidentified officer allegedly frisked and searched § 87(2)(b) (**Allegations F and G**). PO Schmitt issued § 87(2)(b) and § 87(2)(b) § 87(2)(b) summonses and allegedly threw § 87(2)(b) summons at § 87(2)(b) car (**Allegation H**) (Board Review 05; 06). § 87(2)(b) went to PO Schmitt’s RMP to question the summons, at which point PO Parkinson allegedly put his foot on the gas pedal and revved the engine (**Allegation I**).

After receiving the summons, § 87(2)(b) went to the 71<sup>st</sup> Precinct Stationhouse to file a complaint, but Sergeant Keith Cheng of the 71<sup>st</sup> Precinct refused to process his complaint (**Allegation J**). An unidentified officer allegedly told § 87(2)(b) “If you don’t leave, I’m going to lock you up,” (**Allegation K**). The unidentified officer and PO Thomas Owens of the 71<sup>st</sup> Precinct then pushed § 87(2)(b) toward the exit of the stationhouse and allegedly pushed him against the door (**Allegation L, M, N, and O**). An unidentified officer allegedly threw § 87(2)(b) cup on the ground (**Allegation P**). § 87(2)(b) head hurt as a result of the incident. An ambulance responded to his home, but § 87(2)(b) did not go to the hospital.

There was no video footage pertaining to this incident.

This case went beyond the 90-day benchmark by approximately one week due the nearly month-long delay put forth by § 87(2)(b) attorney in interviewing § 87(2)(b) and extensive attempts to obtain a sworn statement from § 87(2)(b).

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of August 15, 2017, a Notice of Claim had not been filed with the City of New York with regard to this incident (Board Review 07).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian and Officer CCRB Histories

- This is the third CCRB complaint filed by § 87(2)(b) (Board Review 10). In case § 87(2)(b) § 87(2)(b) alleged that PO Parkinson spoke discourteously to him, but the complaint was closed as “complainant uncooperative.” § 87(2)(g)
- This is the first CCRB complaint involving § 87(2)(b) (Board Review 11).

- This is the first CCRB complaint filed against PO Schmitt in his three-year tenure.
- PO Parkinson has been a member of the NYPD for thirteen years. He has twenty-three prior CCRB complaints involving 53 allegations, none of which were substantiated. Among his past allegations were eight discourtesy allegations, four of which were unsubstantiated, one of which was exonerated, and three of which were not fully investigated. Five stop (of person) allegations were made against him and were unsubstantiated, exonerated, or closed as “complainant uncooperative.” Among PO Parkinson’s other past allegations were three threats of force, two of which were unsubstantiated and one of which was closed as “complainant uncooperative,” and sixteen allegations of force. Of the allegations of force, six were unsubstantiated, five were exonerated, one was unfounded, and four were closed as “complainant uncooperative.”
- Sgt Cheng has been a member of the NYPD for fifteen years. § 87(2)(g) Sgt Cheng has thirteen prior CCRB complaints involving twenty allegations, two of which were substantiated. In case 200715485, a discourtesy allegation and a refusal to provide name/shield allegation were substantiated, and the Board recommended charges. The NYPD took no disciplinary action. § 87(2)(g)
- PO Owens has been a member of the NYPD for one year. He has one prior CCRB complaint involving one allegation. The allegation was of physical force, but the complaint was withdrawn.

### **Potential Issues**

§ 87(2)(b) provided an unsworn phone statement to the CCRB, and he appeared at the CCRB on June 13, 2017, to be interviewed (Board Review 40). While at the CCRB, after speaking with § 87(2)(b) attorney, Pamela Roth, § 87(2)(b) refused to provide a sworn statement to the CCRB. He did not respond to subsequent contact attempts.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

§ 87(2)(b) stated that after being stopped on Westbury Court by PO Parkinson and PO Schmitt, two officers arrived in an unmarked RMP, and one of these officers frisked and searched him (Board Review 41). § 87(2)(b) described both backup officers as white, slim males in their 20s or 30s. § 87(2)(b) did not describe the backup officers during his phone statement.

PO Parkinson and PO Schmitt were interviewed at the CCRB and stated that although they did not request backup, additional officers arrived in one RMP (Board Review 43; 44). PO Schmitt believed the officers were in plain clothes, were assigned to Anti-Crime, and were in an unmarked RMP. Neither PO Schmitt nor PO Parkinson could recall who these officers were, even after reviewing the roll call.

No UF250 reports were prepared regarding the incident, and the event documents did not show any additional units responding to the incident (Board Review 12). The daily vehicle assignment sheet stated that all unmarked RMPs were at the stationhouse during the incident (Board Review 13). Additionally, the roll call, interrupted patrol log, and command log did not list any Anti-Crime officers working at the time of the incident or during the previous tour (Board Review 14; 15; 16). § 87(2)(g)

§ 87(2)(b) stated that while at the 71<sup>st</sup> Precinct Stationhouse, a uniformed officer told him, “If you don’t leave I’m going to lock you up.” This officer and another officer, identified as PO Owens, subsequently pushed § 87(2)(b) toward the exit, causing his head to hit the stationhouse door. § 87(2)(b) described this officer as a Hispanic or white male in his 20s, standing approximately 6’ tall, with a somewhat heavy build, who was believed to have tattoos on his arms.

Sgt Cheng prepared Threat, Resistance, and Injury (TRI) reports regarding § 87(2)(b) removal from the stationhouse on behalf of PO Owens and PO Michael O’Halloran, but during his interview, Sgt Cheng did

not recall seeing either officer make physical contact with § 87(2)(b) (Board Review 17; 18; 45). Though PO Owens acknowledged pushing § 87(2)(b) PO O'Halloran and PO Owens denied that PO O'Halloran or any other officer pushed § 87(2)(b) (Board Review 46; 47). PO Owens denied threatening to arrest § 87(2)(b) while in the stationhouse, and no other officers heard him do so. Though PO Owens is a white male § 87(2)(b), standing 6' tall, with a heavy build, neither he nor PO O'Halloran has tattoos on their arms, and PO O'Halloran, Sgt Cheng, and PO Owens did not see any officers with tattoos listed on the roll call (Board Review 33). Sgt Cheng, PO Owens, and PO O'Halloran could not think of any other officers who may have been present at the stationhouse.

PO Weaver, who was assigned to stationhouse security, was interviewed at the CCRB (Board Review 48). He denied being present during the incident, and his memo book confirmed that he left the stationhouse at 8:00 p.m. to transport individuals to Central Booking (Board Review 35). PO Weaver does not have tattoos on his arms and has a slim build, and he could not think of any officers who fit the description provided by § 87(2)(b).

§ 87(2)(b) § 87(2)(g) stated that after being pushed out of the stationhouse, an officer threw his cup of tea onto the ground. § 87(2)(b) had been surrounded by multiple officers, most of whom he was unable to describe, and he did not know which of them took the cup out of his hand or threw it on the ground. All interviewed officers denied throwing or observing an officer throw § 87(2)(b) cup. § 87(2)(g)

**Allegation A – Abuse of Authority: On Westbury Court in Brooklyn, Police Officer Stephen Schmitt stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation B – Abuse of Authority: On Westbury Court in Brooklyn, Police Officer Paul Parkinson stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

In addition to his original IAB complaint, § 87(2)(b) provided unsworn phone statements, a sworn statement, and a follow-up phone statement to the CCRB (Board Review 01; 04; 38; 39; 41; 42). His statements were generally consistent.

§ 87(2)(b) stated that after going to McDonalds, § 87(2)(b) and § 87(2)(b) drove to Westbury Court to drop § 87(2)(b) off at his home, located at § 87(2)(b). § 87(2)(b) began to make a U-turn on Westbury Court, but stopped so their friends could approach the vehicle and speak with them briefly. § 87(2)(b) exited the vehicle to throw out his garbage. When he returned to the car, § 87(2)(b) moved the car up and double-parked in front of § 87(2)(b) to drop § 87(2)(b) off. PO Parkinson and PO Schmitt then arrived and approached the vehicle. Sometime after requesting § 87(2)(b) license, PO Parkinson stated that § 87(2)(b) was not wearing his seatbelt. § 87(2)(b) explained to PO Parkinson that the car had not been moving and he was about to exit the car to go home. § 87(2)(b) received one summons for an open container of alcohol. In his statement to IAB, § 87(2)(b) stated that when PO Schmitt and PO Parkinson arrived, § 87(2)(b) moved his vehicle over so the officers could pass.

In his phone statement, § 87(2)(b) stated that he parked at the end of the dead-end to allow other cars to pass his (Board Review 40). When PO Parkinson and PO Schmitt arrived, PO Parkinson stated that he was pulling the males over because they were not wearing seatbelts. § 87(2)(b) was also issued an open container summons. As addressed in the Potential Issues section, § 87(2)(b) did not provide a sworn statement to the CCRB.

PO Parkinson stated that while driving by Westbury Court, he observed approximately eight males standing on Westbury Court (Board Review 43). Among the males were § 87(2)(b) and § 87(2)(b). The officers turned onto Westbury Court, at which point PO Parkinson observed at least two bottles of liquor near the men. As the officers drove down the block, § 87(2)(b) and § 87(2)(b) entered a vehicle, and the other men dispersed. § 87(2)(b) began driving down Westbury Court, at which point PO Parkinson noticed that § 87(2)(b) was not wearing a seatbelt. PO Parkinson motioned with his hand for § 87(2)(b) to stop. PO

Parkinson's intentions in stopping § 87(2)(b) and § 87(2)(b) were to investigate the open containers of alcohol and address § 87(2)(b) not wearing a seatbelt. The officers made no attempts to stop the males who had dispersed.

PO Schmitt stated that when he first observed the group of males, he could not tell what they were doing other than talking, and there was no indication that criminality was afoot (Board Review 44). § 87(2)(b) car was illegally parked at the end of the street in a no standing or no parking area, and was "kind of" double parked. § 87(2)(b) and § 87(2)(b) entered § 87(2)(b) vehicle and began to drive out of the parking space. As the officers drove toward their car, PO Schmitt saw that neither § 87(2)(b) nor § 87(2)(b) was wearing a seatbelt. § 87(2)(b) car had only moved about half of a car's length by that time.

At that point, PO Schmitt planned to approach the males in order to address the fact that neither of them was wearing a seatbelt, and possibly to address that the car had been illegally parked. PO Schmitt issued both of the males open container summonses, but did not issue them summonses for not wearing their seatbelts.

No person can operate a vehicle unless the person is restrained by a safety belt, and no person can be a passenger in the front seat of a vehicle unless restrained by a safety belt. Vehicle and Traffic Law 1229-c (3) (Board Review 19). Officers may stop an individual when they have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. People v. Debour, 40 N.Y.2d 210 (1976) (Board Review 20).

PO Schmitt and PO Parkinson stated that they stopped § 87(2)(b) and § 87(2)(b) upon noticing that they were not wearing their seatbelts while in a moving vehicle. PO Schmitt added that § 87(2)(b) car had been illegally parked.

§ 87(2)(b) argued that when the officers arrived, § 87(2)(b) vehicle was not in motion, and § 87(2)(b) was only not wearing his seatbelt because he was preparing to exit the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

#### **Allegation C – Abuse of Authority: On Westbury Court in Brooklyn, Police Officer Paul Parkinson threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that when PO Parkinson requested his identification (ID), § 87(2)(b) did not provide his ID and instead asked PO Parkinson why he needed his ID. PO Parkinson stated, "You don't want to give me your ID?... You're gonna get locked up [sic]." When backup officers arrived, § 87(2)(b) attempted to give one of the backup officers his ID instead of giving it to PO Parkinson. PO Parkinson insisted that § 87(2)(b) give him the ID, and then stated, "It's too late. I'm going to lock you up." § 87(2)(b) was consistent throughout all of his statements that PO Parkinson stated he was going to "lock" § 87(2)(b) up.

§ 87(2)(b) did not allege that PO Parkinson threatened to arrest § 87(2)(b). PO Parkinson did not recall informing § 87(2)(b) that he was going to get "locked up," but stated that after § 87(2)(b) repeatedly refused to provide his ID, PO Parkinson informed him, "I'd rather do this here than do this back at the precinct." Though PO Parkinson had not yet made the decision to issue a summons to or arrest § 87(2)(b) he stated that § 87(2)(b) could have been arrested at that point for refusing to provide his ID after being in a vehicle without his seatbelt, and for possessing alcohol.

PO Schmitt stated that § 87(2)(b) could have been arrested for obstruction of governmental administration after repeatedly refusing to provide his ID. PO Parkinson told § 87(2)(b) something to the

effect of that he could have already been arrested, but PO Schmitt did not recall PO Parkinson's exact statements.

While issuing an individual a summons, an officer must establish the identity of that individual. If there is doubt concerning identity, an officer should remove the individual to the command for investigation. NYPD Patrol Guide, Procedure 209-09 (Board Review 21).

§ 87(2)(g)

**Allegation D – Abuse of Authority: On Westbury Court in Brooklyn, Police Officer Paul Parkinson searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(g) § 87(2)(b) stated that he had a cup of McDonald's sweet tea in the center console of § 87(2)(b) vehicle, and he left the cup in the vehicle when he went to throw out his trash. After requesting his ID, PO Parkinson reached into the vehicle through the passenger window and removed § 87(2)(b) tea from the car. PO Parkinson took the cap off, smelled the cup, and stated that the cup contained liquor. § 87(2)(b) denied that he or § 87(2)(b) consumed alcohol or smoked marijuana that day, and stated that he does not smoke marijuana or drink alcohol as it conflicts with his medication. Backup officers smelled the tea and confirmed that it only smelled of tea. § 87(2)(b) told the officers to give him a breathalyzer or other test to show that he was not drinking alcohol, but the officers did not do so. After § 87(2)(b) exited the car, PO Parkinson stated that he smelled marijuana. PO Parkinson then put his hand and arm through the car window again to reach for the glove compartment, but § 87(2)(b) told PO Parkinson he could not search the vehicle. PO Parkinson then removed his arm from the car.

§ 87(2)(b) and § 87(2)(b) were issued summonses for § 87(2)(b). After receiving the summonses, § 87(2)(b) went to the 71<sup>st</sup> Precinct Stationhouse and brought his tea to prove that it did not contain alcohol, but officers refused to smell the tea. § 87(2)(b) was pushed out of the stationhouse.

§ 87(2)(b) stated that § 87(2)(b) had been drinking iced tea from McDonalds, but PO Parkinson accused § 87(2)(b) of drinking alcohol and asked the males if they had marijuana. After § 87(2)(b) exited the car, PO Parkinson approached the passenger door, which was open, and looked as though he was about to search the car. § 87(2)(b) told him he needed a warrant to search the car, and PO Parkinson therefore did not search the car.

PO Parkinson stated that upon turning onto Westbury Court, he observed at least two bottles of liquor near a group of approximately eight males, including § 87(2)(b) and § 87(2)(b). PO Parkinson was unable to describe the bottles of alcohol. Some of the men in the group were holding cups, and one male poured the contents of an alcohol bottle into a cup. PO Parkinson could not recall whether § 87(2)(b) or § 87(2)(b) had been holding the bottle of alcohol or cups. As the officers drove down the block, § 87(2)(b) and § 87(2)(b) entered a vehicle, and the other men dispersed. In addition to addressing the no-seatbelt violation, PO Parkinson intended to stop § 87(2)(b) and § 87(2)(b) to investigate the open containers of alcohol. The officers made no attempt to stop the other males who had dispersed.

Upon exiting his RMP, PO Parkinson smelled alcohol and marijuana, which he stated the street and general area smelled of. When he approached § 87(2)(b) vehicle, both scents were stronger, though the marijuana did not necessarily smell freshly burned. PO Parkinson did not see smoke emanating from the car, and he did not recall seeing any evidence of marijuana or marijuana paraphernalia while at § 87(2)(b) window. PO Parkinson observed a cup in the center console of the car. The cup did not have a cap, and PO Parkinson could not recall if the cup was labeled.

PO Parkinson requested § 87(2)(b) ID, and told him he wanted it because § 87(2)(b) was not wearing his seatbelt and was in possession of alcohol. PO Parkinson also stated however, that at this time he was still investigating the incident and had not yet decided to arrest § 87(2)(b) or issue him a summons. Sometime after he initially requested § 87(2)(b) ID, PO Parkinson reached into § 87(2)(b) vehicle and removed the cup from the center console. While reaching for the cup, he did a visual scan of the vehicle. He did not make any attempt to investigate the scent of marijuana other than by “sniffing and looking around.” PO Parkinson did not recall attempting to reach into or search the car again after removing the cup. PO Parkinson smelled the cup, which smelled of liquor. Other than the scent of alcohol, PO Parkinson had no indication that § 87(2)(b) or § 87(2)(b) were under the influence of alcohol or any other substance.

PO Schmitt stated that when he first observed the group of males, he could not tell what they were doing other than talking, and there was no indication that criminality was afoot. A few of the males were holding cups, but § 87(2)(b) was not holding a cup, and PO Schmitt could not tell if § 87(2)(b) was holding a cup. When the males dispersed, PO Schmitt observed a Guinness bottle and a liquor bottle on the ground near where the men had been standing. He had not seen anyone drink from the bottles, and did not see anyone pour the contents of the bottles into their cups. PO Schmitt planned to approach § 87(2)(b) and § 87(2)(b) in order to address the fact that neither of them was wearing a seatbelt. When he leaned toward § 87(2)(b) window to collect his ID and documents, PO Schmitt noticed that the car smelled of liquor. He observed a McDonald’s cup in the center console. The cup had a cap with a straw in it. Other than the scent of liquor, there was no indication that there was liquor in the car or that § 87(2)(b) or § 87(2)(b) had been drinking alcohol. The only thing that indicated that § 87(2)(b) may have been intoxicated was his temper and tone.

Once § 87(2)(b) was out of the car, PO Parkinson took the McDonald’s cup out of the car, which PO Schmitt believed PO Parkinson did by reaching through the passenger door. While reaching into the car, PO Parkinson looked around the reachable and “grab-able” areas such as the floor and the interior of the door, but PO Schmitt did not see PO Parkinson open any compartments in the car. PO Schmitt did not believe PO Parkinson made any additional attempts to look in the car. PO Parkinson removed the cap, and he and PO Schmitt smelled the cup. The cup smelled of unidentifiable liquor that was likely mixed with another beverage. The officers asked who the cup belonged to, and § 87(2)(b) stated, “That’s my sweet tea.”

After smelling the cup, PO Schmitt decided to issue § 87(2)(b) and § 87(2)(b) open container summonses. Although § 87(2)(b) had claimed ownership of the cup, PO Schmitt decided to issue summonses to both males because the officers were not entirely sure who the cup belonged to, and because the cup was in the car, which belonged to § 87(2)(b). The officers did not perform any tests to determine the contents of the cup or whether § 87(2)(b) or § 87(2)(b) were under the influence of alcohol.

During his interview, only when specifically asked about the presence of marijuana did PO Schmitt state that § 87(2)(b) car vaguely smelled of marijuana. The scent was “unremarkable” to him, as it smelled old, and the scent of liquor was more prominent. PO Schmitt noticed the scent when he first approached the vehicle, but he did not see any smoke emanating from the car.

Sgt Cheng and PO Owens stated that while at the stationhouse, § 87(2)(b) was upset about his open container summons and stated that he had not been drinking alcohol (Board Review 45; 46). Sgt Cheng denied observing § 87(2)(b) with a cup. As § 87(2)(b) stood approximately one foot away from Sgt Cheng yelling, Sgt Cheng noticed the odor of alcohol on § 87(2)(b) breath.

PO Owens stated that § 87(2)(b) brought a fast food cup to the stationhouse. § 87(2)(b) lifted the lid on the cup and told Sgt Cheng to smell it. The liquid looked like green tea. PO Owens was unable to smell the contents of the cup. PO Owens eventually pushed § 87(2)(b) out of the stationhouse, and he and § 87(2)(b) were positioned face-to-face during the push. PO Owens did not smell alcohol coming from § 87(2)(b) or the cup.

The timestamp listed on § 87(2)(b) summons is 7:30 p.m. (Board Review 05). The event disposition was put over the radio at 7:54 p.m. (Board Review 12). According to the IAB log, § 87(2)(b) filed this complaint with IAB at 8:16 p.m. (Board Review 01).



Reasonable suspicion must be based on some describable conduct of the defendant and objective factors specific to the incident. People v. Marine, 142 A.D.2d 368 (Board Review 22). Absent other factors and particularized reasonable suspicion of criminality, simple association with others suspected of a crime will not justify a stop. In re Nelson S, 196 A.D.2d 422, 600 (1<sup>st</sup> Dept. 1993) (Board Review 23). An officer can search a vehicle without a warrant if he has probable cause to believe that the vehicle contains contraband, evidence of a crime, or a weapon. People v. Smith, 949 N.Y.S.2d 474 (2012) (Board Review 24). The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle. People v. Chestnut, 43 A.D.2d 260 (Board Review 25).

It is undisputed that PO Parkinson reached into § 87(2)(b) vehicle to retrieve § 87(2)(b) McDonald's cup. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Discourtesy: On Westbury Court in Brooklyn, Police Officer Paul Parkinson spoke discourteously to § 87(2)(b)**

In his unsworn and sworn CCRB statements, § 87(2)(b) stated that during the incident, he attempted to call his attorney. PO Parkinson told § 87(2)(b) “I don’t give a fuck who you call.” In his statement to IAB, § 87(2)(b) did not allege that PO Parkinson used profanity, and instead stated PO Parkinson said, “I don’t care who you call.”

§ 87(2)(b) did not allege any discourteous statements.

PO Parkinson denied stating, “I don’t give a fuck who you call,” denied using profanity at any point, and stated that he does not curse.

PO Schmitt did not hear PO Parkinson make the alleged statement, and also stated that PO Parkinson does not curse.

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – Abuse of Authority: On Westbury Court in Brooklyn, an officer frisked § 87(2)(b)**

**Allegation G – Abuse of Authority: On Westbury Court in Brooklyn, an officer searched § 87(2)(b)**

§ 87(2)(b) stated that while on Westbury Court, two additional officers arrived. While § 87(2)(b) was standing outside of § 87(2)(b) car, PO Parkinson instructed one of the additional officers to search § 87(2)(b). The officer patted § 87(2)(b) waist and legs. He then reached into each of § 87(2)(b) pockets and removed a wallet and cash from his pockets.

§ 87(2)(b) did not allege that § 87(2)(b) was frisked or searched.

PO Parkinson did not recall seeing any officer frisk or search § 87(2)(b) and he did not recall instructing an officer to do so.

PO Schmitt stated that he was in his RMP running IDs when the backup officers were interacting with § 87(2)(b). He did not see any officer frisk or search § 87(2)(b) and he did not hear PO Parkinson instruct an officer to do so.

§ 87(2)(g)

**Allegation H – Discourtesy: On Westbury Court in Brooklyn, Police Officer Stephen Schmitt acted discourteously toward § 87(2)(b)**

§ 87(2)(b) stated that PO Parkinson told PO Schmitt to give § 87(2)(b) the summons, but § 87(2)(b) stated he was not going to take it, as he had done nothing wrong. PO Parkinson therefore told PO Schmitt to throw the summons at § 87(2)(b) or in § 87(2)(b) car. § 87(2)(b) entered § 87(2)(b) car and closed the door and window. PO Schmitt then threw the summons at the car. In his unsworn phone statement, § 87(2)(b) added that when he refused to take the summons, an officer attempted to give the summons to § 87(2)(b) but § 87(2)(b) told § 87(2)(b) not to take it.

§ 87(2)(b) did not mention this portion of the incident.

PO Schmitt stated that when he attempted to give § 87(2)(b) the summons, § 87(2)(b) stated that he was not going to take it, and he refused to take the summons in his hand. § 87(2)(b) was in § 87(2)(b) car, and PO Schmitt therefore put the summons in the car. He believed he put it on § 87(2)(b) lap. PO Schmitt returned to his RMP. § 87(2)(b) exited the car and threw the summons into the RMP. PO Schmitt again attempted to give the summons to § 87(2)(b) and § 87(2)(b) again threw it back into the RMP. PO Schmitt believed § 87(2)(b) did so twice, but stated he and § 87(2)(b) went back and forth about the summons for approximately five minutes. PO Schmitt was never able to successfully hand it to § 87(2)(b). He denied throwing the summons at § 87(2)(b) the car, or anywhere at any point, and stated that he could not leave it somewhere other than in § 87(2)(b) possession. He believed he eventually he gave the summons to § 87(2)(b) and told him to make sure § 87(2)(b) kept it.

PO Parkinson could not recall if § 87(2)(b) compliantly took the summons, and he did not recall seeing an officer throw the summons.

It is undisputed that § 87(2)(b) refused to take his summons. § 87(2)(g)

**Allegation I – Abuse of Authority: On Westbury Court in Brooklyn, Police Officer Paul Parkinson threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) statements regarding this portion of the incident were generally consistent. He stated that after receiving the summons, he went to the officers' RMP to ask why he was issued a summons. Though the RMP was in park, PO Parkinson pressed his foot on the gas pedal, revving the engine as if he was attempting to hit § 87(2)(b). In his statement to IAB, § 87(2)(b) expressed that PO Parkinson's actions were reckless, as PO Parkinson could have hit him with the RMP if the RMP mistakenly was not in park.

§ 87(2)(b) did not mention this portion of the incident in his phone statement.

PO Parkinson did not recall putting his foot on the gas pedal or revving the engine while § 87(2)(b) was outside of the vehicle.

PO Schmitt stated that once he finally was able to get the summons in § 87(2)(b) possession or in the car, the officers attempted to leave to prevent § 87(2)(b) from getting rid of the summons again. PO Schmitt believed that PO Parkinson put the car in drive and attempted to drive away, but he denied that PO Parkinson pressed the gas while § 87(2)(b) was in front of the RMP, and denied that PO Parkinson made any threat to hit § 87(2)(b) with the RMP.

§ 87(2)(g)

**Allegation J – Abuse of Authority: At the 71<sup>st</sup> Precinct Stationhouse, Sergeant Keith Cheng did not process § 87(2)(b) complaint regarding an officer.**

In his IAB and sworn statements, § 87(2)(b) stated that upon arriving at the 71<sup>st</sup> Precinct Stationhouse, he informed Sgt Cheng that he wanted to file a complaint against an officer. Sgt Cheng pointed to the CCRB's phone number, which was posted on a wall, but he did not provide a verbal response, give § 87(2)(b) a complaint form, or address § 87(2)(b) request further. When later told to leave the stationhouse, § 87(2)(b) asked why he had to do so and again stated he wanted to file a complaint.

§ 87(2)(b) stated that he and § 87(2)(b) went to the stationhouse so that § 87(2)(b) could file a complaint, but he did not provide any further information regarding this allegation.

Sgt Cheng stated that § 87(2)(b) never expressed that he wanted to file a complaint of any sort, and § 87(2)(b) instead wanted Sgt Cheng to void his summons, which Sgt Cheng told § 87(2)(b) he could not do. Sgt Cheng did not inform § 87(2)(b) of how he could file a complaint, nor did he show him the CCRB's number.

PO Owens stated that § 87(2)(b) told Sgt Cheng he wanted to file a complaint against an officer(s). PO Owens did not believe that Sgt Cheng gave § 87(2)(b) any paperwork, but he believed that Sgt Cheng verbally provided § 87(2)(b) with IAB's number, which was posted in the stationhouse. After Sgt Cheng provided IAB's number to § 87(2)(b), § 87(2)(b) continued to state he wanted to file a complaint against an officer(s).

PO O'Halloran stated that he remained approximately 25 feet away from § 87(2)(b) and Sgt Cheng, and so he was unable to hear their exact conversation (Board Review 47). He did not hear § 87(2)(b) state that he wanted to file a complaint, and he did not recall Sgt Cheng providing any phone numbers or paperwork to § 87(2)(b). PO O'Halloran confirmed that the stationhouse had complaint forms.

PO Weaver denied being present during the incident, but both he and his representative, PO Patrick O'Sullivan of the 71<sup>st</sup> Precinct, confirmed that there are complaint forms at the 71<sup>st</sup> Precinct Stationhouse (Board Review 48).

PO Parkinson stated he was later informed that § 87(2)(b) came to the stationhouse and "made a complaint." He could not recall who provided him with this information.

When a member of service receives a complaint against an officer in person, the member of service is to interview the complainant, give them a copy of the Civilian Complaint Report to prepare in their own handwriting, and report the complaint to the CCRB immediately. NYPD Patrol Guide, procedure 207-31 (Board Review 26).

The timestamp listed on § 87(2)(b) summons is 7:30 p.m. (Board Review 05). The event disposition was put over the radio at 7:54 p.m. (Board Review 12). According to the IAB log, § 87(2)(b) filed this complaint with via phone IAB at 8:16 p.m., after he had already left the stationhouse (Board Review 01).

§ 87(2)(g)

§ 87(2)(g)

**Allegation K – Abuse of Authority: At the 71<sup>st</sup> Precinct Stationhouse, an officer threatened to arrest**

§ 87(2)(b)

§ 87(2)(b) acknowledged throughout his multiple statements that upon arriving at the stationhouse, he was initially angry and loud, but he quickly came to his senses, realizing he was too loud and that the officers at the stationhouse were not the officers he was displeased with. He apologized, lowered his voice, and explained that he wished to file a complaint and have his summons voided. He also asked Sgt Cheng to smell his cup of tea. Sgt Cheng stated that he could not void the summons and would not smell the tea. He then told § 87(2)(b) to “get out.” § 87(2)(b) had not been issued any commands prior to this point. Two other officers then told him to leave but did not state why. § 87(2)(b) asked why he had to leave, stating he was trying to file a complaint against an officer and resolve the situation. An officer then told him, “If you don’t leave I’m going to lock you up.”

§ 87(2)(b) stated that after § 87(2)(b) asked to file a complaint, he was told to wait a minute, and officers then pushed him out of the stationhouse. § 87(2)(b) provided no further information regarding this portion of the incident.

Sgt Cheng stated that § 87(2)(b) became belligerent when he told § 87(2)(b) that he could not void the summons. As § 87(2)(b) continued to yell, and after Sgt Cheng explained to § 87(2)(b) that there was nothing he could do for him, Sgt Cheng asked § 87(2)(b) to leave approximately three times. § 87(2)(b) did not voluntarily begin to leave at any point. Sgt Cheng believed § 87(2)(b) actions drew the attention of PO Owens and PO O’Halloran, but he did not recall whether § 87(2)(b) actions drew the attention of anyone else. Sgt Cheng did not threaten to arrest § 87(2)(b) or hear another officer do so, but stated that § 87(2)(b) could have been arrested for criminal trespassing.

In his phone conversation with IAB, Sgt Cheng reported that § 87(2)(b) calmed down briefly, but that when Sgt Cheng told him he could not void the summons, § 87(2)(b) began yelling and getting close to Sgt Cheng’s face (Board Review 36; 37). Sgt Cheng therefore told him to leave.

PO Owens stated that while processing an arrest in a separate room toward the back of the stationhouse, he heard § 87(2)(b) yelling by the desk. PO Owens approached the desk. § 87(2)(b) grew

increasingly irate, made a scene, and yelled throughout the incident. A few other officers approached to see what was occurring. PO Owens stated that § 87(2)(b) could have been arrested for trespassing if he refused to leave, and he also could have been arrested for disorderly conduct. Sgt Cheng told § 87(2)(b) to leave, but § 87(2)(b) replied, “No, I’m not leaving.” Sgt Cheng asked him to leave one to two more times, but § 87(2)(b) did not comply. PO Owens did not recall any officer informing § 87(2)(b) he could be arrested while still in the stationhouse.

PO O’Halloran recounted § 87(2)(b) raising his voice but not yelling. His behavior did not seem to necessitate officer intervention, and it did not appear to draw the attention of other individuals in the stationhouse. PO O’Halloran could not recall whether § 87(2)(b) ever lowered his voice, but recounted Sgt Cheng eventually instructing him to leave the stationhouse. He believed § 87(2)(b) complied. PO O’Halloran did not hear any officer threaten to arrest § 87(2)(b) and he did not observe § 87(2)(b) do anything for which he could be arrested.

All other interviewed officers denied being present during this portion of the incident.

§ 87(2)(g)

**Allegation L – Force: At the 71<sup>st</sup> Precinct Stationhouse, Police Officer Thomas Owens used physical force against § 87(2)(b)**

**Allegation M – Force: At the 71<sup>st</sup> Precinct Stationhouse, Police Officer Thomas Owens hit § 87(2)(b) against a door.**

**Allegation N – Force: At the 71<sup>st</sup> Precinct Stationhouse, an officer used physical force against § 87(2)(b)**

**Allegation O – Force: At the 71<sup>st</sup> Precinct Stationhouse, an officer hit § 87(2)(b) against a door.**

In his sworn statement, § 87(2)(b) stated that after being told approximately three to four times to leave the stationhouse, multiple officers surrounded him. An officer, identified via the investigation as PO Owens, and an unidentified officer grabbed § 87(2)(b) arms and forcefully pushed him back approximately ten feet or less, causing the back of his head to hit the door of the stationhouse. In his statement to IAB, § 87(2)(b) stated that approximately six officers grabbed and pushed him. He denied that Sgt Cheng was among the officers to push him. In both his IAB and sworn statements, § 87(2)(b) stated that while being pushed, the upper half of his body moved back but his feet were not underneath him.

§ 87(2)(b) head hurt as a result of his head hitting the door. Upon leaving the stationhouse, he called IAB and requested medical attention. EMTs responded to his home and gave him an ice pack but stated that there was nothing wrong with him. § 87(2)(b) refused to go to the hospital.

§ 87(2)(b) stated that approximately four to five male, uniformed officers pushed § 87(2)(b) out of the stationhouse. He believed Sgt Cheng was among the officers to push § 87(2)(b) but he was unable to describe the other officers. He did not provide additional information regarding this portion of the incident.

PO Owens stated that after § 87(2)(b) refused multiple requests to leave the stationhouse, PO Owens approached § 87(2)(b) who was standing approximately five feet from the door. PO Owens put both hands on § 87(2)(b) chest and pushed § 87(2)(b) out of the stationhouse. PO Owens did not consider the push to be forceful or remarkable, and he therefore did not think it was necessary to prepare a TRI report. As PO Owens pushed § 87(2)(b) § 87(2)(b) pushed his weight forward rather than compliantly walking back, but § 87(2)(b) did not attempt to use force against any officer. He did not fall or stumble as a result of the push, and he remained upright. Even after being informed that a TRI report had been prepared on PO O’Halloran’s behalf, PO Owens stated he did not believe any other officers took part in physically escorting § 87(2)(b) out of the stationhouse. While PO O’Halloran was in the vicinity, he stayed at a distance, did not get involved in any way, and did not make physical contact with § 87(2)(b).

PO Owens denied pushing § 87(2)(b) against a door or any hard object/surface, denied seeing another officer do so, and denied that § 87(2)(b) head made contact with any surface. He believed that someone tried opening the door as PO Owens pushed § 87(2)(b) out, but he did not know who specifically did so. § 87(2)(b) continued to yell once outside of the stationhouse, and PO Owens stated he could have been arrested for trespassing or disorderly conduct.

PO O'Halloran stated that he remained 25 feet away from the desk during the entire incident and he never interacted with § 87(2)(b). Though § 87(2)(b) raised his voice, he was not extremely loud and his actions did not seem to necessitate officer intervention. PO O'Halloran believed that § 87(2)(b) compliantly left the stationhouse upon request, but that Sgt Cheng walked alongside him. PO O'Halloran denied using any force against § 87(2)(b). He did not see any officer push or make physical contact with § 87(2)(b) in any way, and he did not see § 87(2)(b) head make contact with any surface.

PO O'Halloran later learned that Sgt Cheng prepared a TRI report on his behalf. Sgt Cheng informed PO O'Halloran that § 87(2)(b) had alleged that he was pushed out of the stationhouse and that he hit his head, and Sgt Cheng therefore had to prepare a TRI report. Sgt Cheng informed PO O'Halloran that he made a TRI report on PO O'Halloran's behalf simply because he remembered PO O'Halloran being in the stationhouse at the time. PO O'Halloran stated that he was "not happy" about Sgt Cheng preparing the report.

Sgt Cheng stated that § 87(2)(b) never voluntarily began to leave the stationhouse after being told to do so, and he could have been arrested for criminal trespassing. During § 87(2)(b) conversation with Sgt Cheng, PO Owens and PO O'Halloran approached, and Sgt Cheng believed they escorted him out of the stationhouse. He did not see what specific actions they took to do so, was not sure whether the officers made physical contact with § 87(2)(b) and could not recall whether any other officers assisted in escorting § 87(2)(b) out. Sgt Cheng did not see officers push § 87(2)(b) and did not see § 87(2)(b) head make contact with a door or wall.

IAB later contacted Sgt Cheng in response to § 87(2)(b) call to IAB, and informed Sgt Cheng that § 87(2)(b) alleged he had been "hit." Sgt Cheng therefore prepared TRI reports. Upon reviewing the TRI reports that he prepared on behalf of PO Owens and PO O'Halloran, which stated that the officers used "pushing and shoving," Sgt Cheng still could not recall whether officers actually physically escorted § 87(2)(b) out of the stationhouse.

In his phone call with PO Manuel of IAB, Sgt Cheng stated that when § 87(2)(b) continued to yell and came close to Sgt Cheng's face, Sgt Cheng told him to leave, but § 87(2)(b) refused to do so (Board Review 36; 37). Sgt Cheng stated other officers heard their conversation and § 87(2)(b) was pushed out, but he denied that § 87(2)(b) head hit anything. Sgt Cheng stated that PO Owens, PO O'Halloran, and a few other officers were present, but he could not recall who the other officers were. Sgt Cheng initially stated that "we" pushed § 87(2)(b) out. PO Manuel then asked Sgt Cheng, "When he was being escorted out of the building, were you just the one that opened the door?" and, "Before he actually broke the doorway you already had opened up the door so that he could clear the entrance?" Sgt Cheng affirmed that those were the circumstances.

PO Schmitt stated that Sgt Cheng later informed him § 87(2)(b) had come to the stationhouse with a cup, which he put in Sgt Cheng's face. Sgt Cheng informed PO Schmitt that § 87(2)(b) was yelling, became disorderly, and had to be escorted out of the stationhouse. PO Schmitt did not learn of any physical altercation occurring.

PO Parkinson was later informed that § 87(2)(b) came to the stationhouse to file a complaint, but he was not provided with any additional information.

The two TRI reports Sgt Cheng prepared on behalf of PO Owens and PO O'Halloran list the type of force used by officers as "pushing/shoving" (Board Review 17; 18). Sgt Cheng did not document any "reason for force," and he submitted and approved both reports. Sgt Cheng also prepared an AIDED report in which he wrote that § 87(2)(b) "states while being removed from 71 station house he hit back of his head on the door" (Board Review 29).

Neither PO Owens nor PO O'Halloran had memo book entries regarding this incident (Board Review 33; 34). Sgt Cheng's memo book states, "C/V states that he was hit on the head and removed from the precinct... Perp removed from stationhouse after being told and refused to leave" (Board Review 32).

A person is guilty of trespassing when he or she knowingly enters or remains on a premises unlawfully. NY Penal Law 140.05 (Board Review 27). A person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance or alarm, he makes unreasonable noise or without lawful authority, disturbs a lawful assembly or meeting or persons. NY Penal Law 240.20 subsections 2 and 3 (Board Review 28).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation P – Discourtesy: At the 71<sup>st</sup> Precinct Stationhouse, an officer acted discourteously toward**

§ 87(2)(b)

§ 87(2)(b) stated that after being pushed out of the stationhouse, an officer took the cup of tea from his hand and threw it on the ground. There were multiple officers surrounding him at the time, most of whom he was unable to describe, and he did not know which of the officers threw his tea. § 87(2)(b) had planned to bring the tea to court.

§ 87(2)(b) did not allege that an officer threw § 87(2)(b) cup of tea.

All interviewed officers denied throwing § 87(2)(b) tea or seeing another officer do so.

§ 87(2)(g)

Squad: \_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date